

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

LAVELL BONE,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:19-CV-214
(GROH)**

**DR. LINGO LAI,
DR. BEN STEPHENS,
WVU MEDICINE EYE INSTITUTE, and
W.V. UNIVERSITY HOSPITALS,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Robert W. Trumble. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed R&R. Magistrate Judge Trumble issued his R&R [ECF No. 59] on December 17, 2020. In his R&R, Magistrate Judge Trumble finds that the Plaintiff has failed to state a claim upon which relief can be granted against Defendants Ben Stephens, WVU Medicine Eye Institute and W.V. University Hospital, and recommends that the Plaintiff’s Complaint [ECF No. 13] be dismissed with prejudice. Furthermore, he finds that the Plaintiff failed to exhaust administrative remedies and recommends that the Plaintiff’s complaint [ECF No. 13] be dismissed without prejudice as to Defendant Lingo Lai.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a *de novo* review of the magistrate judge's findings where objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objection is made. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and of a plaintiff's right to appeal this Court's Order. 28.U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to Magistrate Judge Trumble's R&R were due within fourteen plus three days of service. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The R&R was mailed to the Plaintiff by certified mail on December 17, 2020. ECF No. 59. The Plaintiff accepted service on January 12, 2021. ECF No. 61. To date, no objections have been filed. Accordingly, the Court will review the R&R for clear error.

Upon careful review of the R&R, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 59] should be, and is hereby, **ORDERED ADOPTED** for the reasons more fully stated therein. Therefore, the Plaintiff's Complaint [ECF No. 1] is **DISMISSED WITH PREJUDICE** as to Defendants Stephens, WVU Medicine Eye Institute and WV University Hospital, and **DISMISSED WITHOUT PREJUDICE** as to Defendant Lai. The Defendants' Motions to Dismiss [ECF Nos. 23, 24, 25, 26 & 34] are **GRANTED**.

This matter is **ORDERED STRICKEN** from the Court's active docket. The Clerk of Court is **DIRECTED** to mail a copy of this Order to the Plaintiff by certified mail, return

receipt requested, at his last known address as reflected on the docket sheet.

DATED: February 16, 2021

A handwritten signature in blue ink, appearing to read "Gina M. Groh", is written over a horizontal line.

GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE